Fair Summary II: An Update on Delaware's Disclosure Regime Regarding Fairness Opinions

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Three years ago, we published an article in this journal setting forth a general framework for fiduciary disclosure regarding fairness opinions under Delaware law. While the issues we discussed in the prior article are still litigated with some frequency, the Court of Chancery has noted that financial disclosures in recent years have been far more robust than they had been in the past—undoubtedly due largely to the court's rulings. In response, plaintiffs have sought new lines of attack, and the Delaware courts have therefore begun to focus not only on the disclosure of underlying financial analyses broadly, but also on specific and discrete issues involving fairness opinions and projections as well as on issues beyond the fairness opinion itself, most notably the financial advisor’s potential conflicts and incentives. In this article, we discuss the current state of Delaware’s fiduciary disclosure regime and the developments over the last three years.

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